

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WADDELL SMITH,

Plaintiff,

- against -

COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

**CORRECTION LIEUTENANT TROY
MITCHELL and CORRECTION
SERGEANT CHRISTOPHER
FENNESSY** in their individual and
official capacities as Correction Officers
employed by the State of New York,

Defendants.
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Plaintiff, by his attorney, ANDREW F. PLASSE & ASSOCIATES, LLC, as and for his
Complaint, hereby alleges and shows to the Court the following:

1. Plaintiff Waddell Smith hereby brings this action against Lieutenant Troy Mitchell and Sergeant Christopher Fennessy, in their individual and official capacities as Correction Officers employed by the State of New York for damages arising out of unconstitutional policies and actions arising out of an alleged excessive use of force incident which occurred on August 18, 2017.

2. Plaintiff brings this action against the defendants to redress the deprivation of rights secured to him by the Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C Section 1983. This court has Jurisdiction over a Federal Question. No amount in controversy is required to be plead.

3. No State Law Claims are alleged but to the extent State Law Claims are made, this court has pendent jurisdiction over those causes of action.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 1331, 1332, and 1343(a) (3) and 42 U.S.C. Section 1983.

5. Venue is proper in this District pursuant to 28 U.S.C. 1381.

6. At all times hereinafter mentioned the defendants Lieutenant Mitchell and Sergeant Fennessy were employed as New York State Correction Officers and acted under color of state law or a statute, ordinance, regulation or custom.

7. That heretofore the Plaintiff exhausted his Administrative Remedies by filing a Grievance regarding the below mentioned alleged misconduct, which was referred to the Office of Special Investigations, which made a final determination on the misconduct issues alleged herein.

8. Plaintiff has complied with the provisions of the PLRA prior to commencement of this suit and/or to the extent applicable.

STATEMENT OF FACTS

9. On August 18, 2017 at approximately 12:00 p.m. at Auburn Correctional Facility, 135 State Street, Auburn, NY at Isolation Room 9, Medical Unit, defendants Lieutenant Troy Mitchell and Sergeant Fennessy used excessive force on the plaintiff.

10. Lieutenant Mitchell and Sergeant Fennessy entered the plaintiff's cell to conduct a search.

11. Lieutenant Mitchell pushed the head of the plaintiff into the corner of a cell, causing a cut over his left eye.

12. Lieutenant Mitchell then ordered Sergeant Fennessy to administer two applications of OC Pepper Spray to the face of the plaintiff which plaintiff was restrained and on the floor.

13. Lieutenant Mitchell subsequently administered five applications of OC Pepper spray directly into the eyes of plaintiff while he was restrained, opening the plaintiff's eyes physically with his hands, and then emptying his entire spray can into his open eyes and face, and into his cut near his eye.

14. After blinding the plaintiff with the spray, defendants assaulted and battered plaintiff numerous times with their fists, batons, weapons, and feet, while he was in agony from the Pepper Spray in his eye and while he was restrained, causing burning in his eyes, burning in his cuts, and blindness.

15. Plaintiff sustained severe personal injuries as a result, including loss of vision.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS LIEUTENANT MITCHELL and SERGEANT FENNESSY, JOINTLY AND SEVERALLY, PLAINTIFF RESTATES AND REALLEGES EACH AND EVERY ALLEGATION SET FORTH IN PARAGRAPHS MARKED AND ENUMERATED "1-15" AND FURTHER ALLEGES AS FOLLOWS:

16. Upon information and belief, the actions taken as aforesaid by Lieutenant Mitchell and Sergeant Fennessy, on August 18, 2017 by assaulting and battering the plaintiff, and causing a cut in his eye and then emptying OC spray into his face and eyes while he was restrained, assaulting and battering the plaintiff causing him to sustain a cut in his causing him to sustain a collapsed lung, constituted excessive force, in violation of the Fourth and Eighth Amendments and a deprivation of liberty without due process of law under the Fifth and Fourteenth Amendments.

17. Upon information and belief, Lieutenant Mitchell and Sergeant Fennessy acted with actual malice toward the Plaintiff and with willful and wanton indifference and deliberate disregard for the statutory and constitutional rights of the plaintiff.

18. Solely by reason of the above, the plaintiff sustained severe personal injuries, was rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiff has been and continues to be unable to pursue the usual duties with the same degree of efficiency as prior to this accident, all to plaintiff's great damage.

19. That by virtue of the foregoing, Plaintiff has been damaged in the amount of TEN MILLION [\$10,000,000.00] DOLLARS.

I. Judgment on the First Cause of Action against defendants Lieutenant Mitchell and Sergeant Fennessy in the amount of TEN MILLION (\$10,000,000.00) DOLLARS;

II. Punitive Damages against defendants Lieutenant Mitchell and Sergeant Fennessy in the amount of TWENTY FIVE MILLION (\$25,000,000.00) DOLLARS;

III. Together with the costs and disbursements of this action, for reasonable attorney's fees under the applicable Federal Statutes, and for such other and further relief as to this Court seems just and proper.

DATED: August 14, 2020
Flushing, New York



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**DEMAND FOR JURY TRIAL IS HEREBY MADE
PURSUANT TO RULE 38 OF THE FEDERAL
RULES OF CIVIL PROCEDURE**



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